1986

Dorothy Lynette Hope v. Russell C. Berrett : Brief of Appellant

Utah Supreme Court

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Mark H. Gould; Marquardt, Hasenyager & Custen; Attorney for Appellant.

IN THE SUPREME COURT OF THE

STATE OF UTAH

DOROTHY LYNETTE HOPE, :

Plaintiff/Appellant : Case No. 860606

vs. : #13

RUSSELL C. BERRETT, :

Defendant/Respondent: :

BRIEF OF APPELLANT

Appeal from the Second Judicial District Court of Weber County, State of Utah, the Honorable John F. Wahlquist, District Court Judge.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES. ii

STATEMENT OF ISSUES PRESENTED ON APPEAL iii

STATEMENT OF THE CASE 1

Statement of Facts 1

SUMMARY OF ARGUMENTS 2

ARGUMENT 2

POINT I. The Workmen's Compensation Definition of "Course of Employment" Should not be Applied to a Negligence Case 2

POINT II. The Trial Court Erred In Applying the Workmen's Compensation Definition of "Course of Employment" in this Case and Therefore the Trial Court's Dismissal of this Lawsuit Must be Reversed 8

CONCLUSION 9

ADDENDUM 13

Order of Honorable John Wahlquist granting Respondent's Motion for Summary Judgment, Findings of Fact and Conclusions of Law

TABLE OF AUTHORITIES

Statutes Cited:

Utah Code Annotated 35-1-45 3

Cases Cited:

Bagley v. Gilbert
428 NYS 2d 737 (New York, 1980). 5

Beard v. Brown
616 P.2d 726 (Wyoming, 1980) 7

Eisnaugle v. Booth
226 SE2d 259 (West Virginia, 1976) 5

McNaughton v. Sims
147 SE2d 631 (South Carolina, 1966) 5

Mast v. Rogers
254 NE2d 179 (Illinois, 1969) 5

Melvor v. Savage
33 Cal. Rptr. 740 (California, 1963) 7

Molino v. Asher
588 P.2d 1033 (Nevada, 1979) 6

North Beck Mining v. Industrial Commission
200 P. 111 (Utah, 1921). 4

Park Utah Consolidated Mines v. Industrial Commission
36 P.2d 979 (Utah, 1934) 11

Soldier Creek Coal v. Bailey
22 UAR 9 (Utah, 1985). 3,4

Ward v. Wright
490 SW2d 223 (Texas, 1973) 7

Williams v. Bebbington
146 SE2d 853 (South Carolina, 1966) 6

Wilstead v. Industrial Commission
407 P.2d 692 (Utah, 1965). 4

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Was the Appellant injured in the course of her employment or arising from her employment as a matter of law?

2. Should the definition of "course of employment" which has arisen in workmen's compensation cases be applied in negligence cases to prevent an injured person from recovering damages?

3. Should the Appellant be barred from suing a co-employee for negligence merely because the accident which gave rise to this litigation occurred on her employer's premises?

STATEMENT OF THE CASE

This case is an appeal from an Order by the Honorable John Wahlquist of the Second Judicial District Court of Weber County. Specifically, Judge Wahlquist granted summary judgment and dismissed Appellant's case which she brought against the respondent for injuries resulting from an automobile-pedestrian accident. Judge Wahlquist's Order and the Findings of Fact and Conclusions of Law are attached to this brief in the addendum.

STATEMENT OF FACTS

Appellant and Respondent are both federal employees who work at the Defense Depot Ogden. F.F.,p.2. On October 17, 1984, the Appellant parked her automobile in the parking lot at the DDO where she worked. F.F.,p.2. She exited her vehicle and attempted to walk to the building in which she worked. F.F.,p.2

The Respondent had arrived for work at approximately the same time F.F.,p.2. As he drove through the parking lot his vehicle struck the Appellant. F.F.,p.3. Appellant was injured as a result of the collision. F.F., p.3.

At the time of the accident, neither the Appellant or Respondent had "punched in" or actually reported for work, F.F.,p.3, nor were they being paid for the time they spent in the parking lot. F.F.,p.3

Appellant has received Federal Worker's

Compensation Benefits from the Federal Employees Compensation Administration. F.F.,p.3

The accident occurred on the employer's premises. For purposes of the Motion for Summary Judgment, whether or not there was negligence is immaterial. F.F.,p.2

SUMMARY OF ARGUMENT

Briefly, Appellant argues that it was error for the trial court to hold that "course of employment" as defined in workmen's compensation cases should be applied to negligence cases. This is the case because "course of employment" has been broadly and/or liberally construed to help injured workers obtain compensation. Consequently, this language should not automatically be applied in other types of litigation (i.e., negligence cases) to prevent an injured party from recovering damages in a negligence case.

Some other states define course of employment liberally in workmen's compensation cases. However, they apply a less broad definition in negligence cases. This allows some negligence lawsuits to proceed. Appellant argues that this court should also define "course of employment" differently in a negligence case.

This will necessitate reversal of the trial court's ruling and order.

ARGUMENT

POINT I

THE WORKMEN'S COMPENSATION DEFINITION OF "COURSE OF EMPLOYMENT" SHOULD NOT BE APPLIED TO NEGLIGENCE CASES

Utah's Workmen's Compensation Statute (U.C.A. 35-1-45) provides that employees who suffer an injury within the course of their employment or arising out of their employment can only claim worker's compensation benefits as their sole and exclusive remedy. A recent Utah case interpreting this law has held that any injury which occurs on the employer's premises to an employee is within the course of employment. Soldier Creek Coal v. Bailey, 22 U.A.R. 9 (Utah, 1985).

Respondent contended since this accident occurred in a parking lot on the premises of the Defense Depot Ogden that workmen's compensation was the Appellant's only remedy for her injuries. The trial court accepted this contention and granted the Respondent's Motion for Summary Judgment.

The basic question that this litigation raises is whether this Court should apply the standard of "Course of Employment" which has evolved in workmen's compensation cases to negligence cases. It is the Appellant's contention that it was error for the trial court to automatically apply the same standard conclusion. The Court stated:

> The clear intention of our legislature was to "substitute a more humanitarian and economical system of compensation for injured workers or their dependents in case of their death" which the more humane and moral conception of our time requires. [36 P.2d at 981]

In North Beck Mining Company v. Industrial Commission, 200 P. 111 (Utah, 1921) the court stated the following:

> The Industrial Act, ... must be liberally construed and with the purpose of effectuating its benficient and humane objects. [200 P. at 112]

In Wilstead v. Industrial Commission, 407 P.2d 692 (Utah, 1965) the Utah Supreme Court stated that:

> The purposes which underlie the workmen's compensation act are: to assure to the injured employee and his dependents an income during the period of his total disability and to provide compensation for any resulting permanent disability; to accomplish this by a simple and speedy procedure which eliminates the expense delay and uncertainty in having to prove negligence on the part of the employer; and to thus require industry to bear the burden of the injuries suffered in it. [407 P.2d at 693]

The prior cases show that the court has attempted to LIBERALLY CONSTRUE the workmen's compensation statute to provide coverage for an injured employee when possible.

It logically follows that the "course of employment" has been defined as broadly as it has been to enable injured workers who would otherwise be unable to claim workmen's compensation to do so. Further, it must be conceded that this term has indeed been broadly defined. If mere presence anywhere on an employer's premises constitutes being within course of employment, the phrase is an extremely broad one indeed!

It is a mistake for a court to take this broad phrase defined in workmen's compensation cases and to apply it automatically in other types of lawsuits. In this case, rather than aiding an injured person in recovering damages it has had the opposite effect. Here, it has resulted in the dismissal of an injured person's suit for damages.

Other courts in other states has considered this issue. *1 Two rules have developed. One rule automatically applies the "scope of employment" to standard as it developed in workmen's compensation cases to negligence cases.**2 The other rule defines "scope of employment" differently in negligence cases than in workmen's compensation cases.

Appellant contends that the rule which requires a different definition of "scope of employment" in negligence cases is the one which should be adopted by this court as Utah law. Such a rule may not be simple, but justice and simplicity do not always run together.

In McNaughton v. Sims, 147 SE2d 631 (South Carolina, 1966) the South Carolina Supreme Court held that scope of employment standard in a negligence case would be

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*1 - This issue appears to be one of first impression in Utah.

**2 - See Mast v. Rogers, 254 NE2d 179 (Illinois, 1969). Bagley v. Gilbert, 428 NYS2d 737 (New York, 1980). Eisnaugle v. Booth, 226 NE2d 259 (West Virginia, 1976)

different than that in a tort case. Here, plaintiff was involved in a collision in her employer's parking lot. The accident occurred after working hours. The South Carolina Supreme Court held that the plaintiff was not barred by South Carolina's Workmen's Compensation Act from suing a co-employee who caused the accident for negligence.

Another South Carolina case is instructive. Williams v. Bebbington, 146 SE2d 853 (South Carolina, 1966). Here, the plaintiff was struck by a car driven by a fellow employee. The accident occurred on company property, but prior to the start of work. The South Carolina Supreme Court held that a co-employee would only be immune from a negligence suit when it could be shown he was performing work for his employer. Since this was not occurring in this case, the plaintiff was allowed to sue the co-employee for negligence.

In Molino v. Asher, 588 P.2d 1033 (Nevada, 1979), the Nevada Supreme Court considered this same issue. Here, an employee parked her car in an employer's parking lot as she prepared to go to work. A co-employee struck her vehicle causing injury. She sued the co-employee for negligence. The Nevada Supreme Court held that the employee could maintain a negligence suit against the co-employee despite Nevada workmen's compensation law. A different standard for scope of employment in negligence suits was the

basis of the ruling.

In Ward v. Wright, 490 SW2d 223 (Texas, 1973) the Texas Civil Appeals Court reached the same conclusion. Here, another employee was injured by a co-employee on the employer's parking lot. The Texas Court allowed the injured employee to sue his co-employee for negligence despite the Texas Workmen's Compensation Statute.

In Beard v. Brown, et al., 616 P.2d 726 (Wyoming, 1980) this same issue was decided. Here, an employee was traveling to work when he negligently caused an automobile accident. Suit was brought against his employer, the R. L. Frailey Company. The trial court held that the employee was within the scope of his employment. Judgment was entered against the employer. The employer appealed. The Wyoming Supreme Court held that while the employee might have been within the scope of employment for purposes of workmen's compensation, he was not in the scope of employment for the purpose of negligence lawsuit. The Wyoming Supreme Court stated:

> By saying this, we do not intend to overrule or limit in any way the holdings of those cases. It is sufficient to point out that they are all worker's compensation cases and, as such, their holdings are not generally applicable in the negligence area. [616 P.2d at 736]

Finally, in Melvor v. Savage, 33 Cal. Rptr. 740 (California, 1963), the California Court of Appeals reached

this same conclusion. Here, the plaintiff was injured by another co-employee in a parking lot owned by their employer. The injured employee sued the co-employee for negligently injuring him. The co-employee defended on the basis that the injured employee's sole and exclusive remedy for the injury was workmen's compensation. The trial court granted summary judgment for the co-employee. The injured employee appealed. On appeal, the California Court of Appeals reversed the trial court and ruled that the injured employee could sue for negligence. The court held that simply because the injured employee had collected workmen's compensation benefits was no reason to dismiss his negligence lawsuit.

POINT II

THE TRIAL COURT ERRED IN APPLYING THE WORKMEN'S COMPENSATION DEFINITION OF "COURSE OF EMPLOYMENT" IN THIS CASE AND THEREFORE THE TRIAL COURT'S DISMISSAL OF THIS LAWSUIT MUST BE REVERSED.

In the instant case, the failure of trial court to apply a different definition of "course of employment" in this case resulted in the dismissal of the Appellant's claim for damages. If the Court rules that it was erroneous to automatically apply "course of employment" as this term has evolved in the context of workmen's compensation cases to negligence cases then it must reverse the trial court's decision.

The court must be cognizant of public policy considerations in deciding this case. A ruling which allows this decision of trial court to stand will preclude anyone in the state who is injured in their employer's parking lot (or otherwise on his premises) from bringing a lawsuit for negligence. The sole remedy of these individuals will be workmen's compensation.

Workmen's compensation is an inadequate remedy for injured individuals because it fails to provide damages for either pain and suffering or loss of earning capacity. Individuals who are forced to accept workmen's compensation are not fully compensated for their injuries. Additionally, since workmen's compensation is paid irrespective of fault, this remedy provides no incentive to negligent individuals to behave in careful manner and to avoid accidents and injuries.

Consequently, affirmation of the trial court's decision and application of the workmen's compensation rule to negligence cases defeats the twin aims of the Civil Justice System. These are:

(1) Fully compensate injured plaintiffs for losses which are not their fault;

(2) Deter negligent misconduct by forcing negligent individuals to pay for the harm they have caused.

CONCLUSION

Appellant asks that this court reverse and overturn the ruling and order by the Honorable John Wahlquist dismissing appellant's lawsuit against the respondent.

The fact of the matter is that "scope of employment" has received a very liberal definition in workmen's compensation cases. To the extent that this liberal definition helps compensate injured employees it may be meritorious. However, to rigidly and automatically apply this same definition to a negligence case to keep an injured person from recovering damages is poor reasoning.

The Appellant had not punched in for the day at the time of the accident. She was not engaged in work for her employer. She was not in a negligence case.

Workmen's compensation law was devised to compensate injured employees regardless of their fault in causing an injury. In return for compensation on a "no-fault" basis, the injured employee lost his right to claim damages for "pain and suffering" and other non-economic damages. The benefits that an injured employee is allowed to claim are severely limited to benefits provided under Utah law by the Utah Industrial Commission. Generally speaking, the employee receives payment of medical expenses and some compensation for time he/she misses from work as a result of the injury.

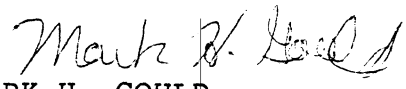
Utah Courts have traditionally construed our stat-

ute in a way so as to provide the maximum amount of coverage for employees. In other words, when there is doubt about whether an employee is entitled to coverage, this doubt has generally been resolved in favor of the injured employee. The idea is that it is better for the employer to pay an employee's medical bills than for the injured employee to be compensated by the taxpayers through public assistance, welfare, and/or rehabilitation. A lengthy list of Utah case law supports this view.

In Park Utah Consolidated Mines v. Industrial Commission, 36 P.2d 979 (Utah, 1934), the court agreed with this receiving a salary for the time she spent in the parking lot. The only thing that brought her arguably within the course of her employment was the fact that the accident occurred on her employer's premises. Appellant should not lose her right to bring a suit for negligence simply because she was injured on her employer's premises.

Respectfully submitted,

MARQUARDT, HASENYAGER & CUSTEN



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CERTIFICATE OF MAILING

I hereby certify that on this 21st day of February,

1987, I mailed four true and correct copies of the above and foregoing Brief of Appellant, postage prepaid, to Wendell E. Bennett, Attorney for Respondent, 448 East 400 South, Suite 304, Salt Lake City, Utah 84111.

Mark H. Gould

MARK H. GOULD

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

DOROTHY LYNETTE HOPE, Plaintiff, vs. RUSSELL C. BERRETT, Defendant.	)	MEMORANDUM DECISION Case No. 92546

The defense attorney is invited to submit Findings of Facts, Conclusions of Law, and Judgment consistent with that indicated below.

ASSUMED FACTS

For the purposes of this motion, the following facts are assumed to be true.

1. Both the plaintiff and the defendant were, at the time in question, employees of the Department of Defense, on the installation that is referred to as the Defense Depot in Ogden. This Depot is a secure military installation in the sense that there are armed guards at the gates and it requires an appropriate pass before a person may enter. Traffic is regulated on the Depot by the military. The military assigns parking spaces or parking areas to its employees.

2. The plaintiff was on her way to work on the morning in question. She had entered the gate. She proceeded to her

parking area, immediately east of the administration building. She got out of her car and was a pedestrian in the parking area on the way to her punch in station.

3. The defendant is also an employee of the Depot. He was also on his route to his work station. He had entered the Depot. He had entered the parking area. He was driving his pickup in search of a vacant parking stall.

4. The plaintiff was struck by the defendant's pickup truck. For the purpose of this ruling, the Court will assume that the defendant driver of the pickup truck negligently struck the pedestrian, even though the Court recognizes that this allegation is denied, and the defendant does in fact insist the fault is primarily that of the pedestrian.

5. Neither of the parties have yet reached their time clock punch in station. Both parties were in the parking lot provided for their use.

6. The plaintiff has filed for her workman's compensation benefits. She has collected them. The federal decisions indicates clearly that a person is regarded to be at work when the employee crosses the boundary line of the employer's premises. The various cases discussed this view and hold that their needs to be a fixed line where workman's compensation does afix. This could argumentatively be after the check punch, or after entry to the building where they are employed, or after

they reached their assigned parking stalls, or when they enter onto the premises. The federal rule is clear that a federal employee is at work when the federal employee goes through the gate. The plaintiff has collected all of her workman's compensation, and regardless of whether the parking stall was negligently designed, etc., or not, the employer is protected from suit.

7. There can be no question but that the defendant had also entered onto his employer's premises. He was in an area basically controlled by his employer. The issue is whether or not he is protected from a negligent suit on the theory that he is a federal employee under workman's compensation.

RULING

This Court believes that the federal authority is the protection to the employer occurred at the property line. Utah also has the "property line" rule for employers. This is the majority state rule. There is little logical support for a different rule for the fellow servants that are forced to the location. Workman's compensation insurance was also for the fellow servant's benefit as well as the employer's.

JUDGMENT

The motion for summary judgment is granted.

DATED this 30 day of October, 1986.

JOHN F. WAHLQUIST, Judge

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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

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DOROTHY LYNETTE HOPE,	:	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
Plaintiff,	:	JUDGMENT
vs.	:	
RUSSELL C. BERRETT,	:	Civil No. 92546
Defendant.	:	

---oooOooo---

The above entitled matter came on regularly for hearing before the Honorable John F. Wahlquist, District Judge on Friday, October 10, 1986. Mark H. Gould appeared on behalf and represented the interests of the plaintiff Dorothy Lynette Hope. Wendell E. Bennett appeared on behalf of and represented the interests of the defendant Russell C. Berrett. Both prior to the hearing and subsequent thereto, both parties submitted memoranda to the Court citing authorities relied on by them. The Court having read and considered the pre-argument and post-argument memoranda, and having heard argument by counsel, and being fully advised in the premises, now makes and enters its findings of fact, conclusions of law, and judgment as follows, to wit:

FINDINGS OF FACT

1. On October 17, 1984, at approximately 7:15 a.m., the motor vehicle accident out of which this lawsuit arises occurred. At said time, both the plaintiff and the defendant were employees of the United States Government on the military installation that is commonly known as the Defense Depot in Ogden. The Depot is a secure military installation in the sense that there are armed guards at the gates and it requires an appropriate pass before a person may enter the installation. Traffic is regulated on the Depot by the military. The military assigns parking spaces or parking areas to its employees.

2. At the time of the accident, the plaintiff was on her way to work at her assigned work area within the military installation. She had entered the gate, proceeded to her parking area, exited her car, and was walking toward the Administration Building where she would punch a time clock and commence her work activities.

3. The defendant, also an employee at the Defense Depot in Ogden, had also entered the premises of the Defense Depot in Ogden through a manned security gate, and was driving his motor vehicle within the parking lot where he was assigned to park on his way to his assigned parking stall preparatory to leaving his vehicle, punching in for work, and commencing his work.

4. As both the plaintiff and the defendant were within the Defense Depot in Ogden secured area, and were in particular in the

parking area adjacent to their work station, with the plaintiff then being a pedestrian, and the defendant then being a driver, a motor vehicle pedestrian accident occurred between the plaintiff and the defendant's motor vehicle being operated by the defendant. The plaintiff claims the defendant was negligent in causing the motor vehicle pedestrian accident, and the defendant denies that negligence, and has alleged the plaintiff was negligent in causing the accident. For the purposes of the motion for summary judgment, the question of liability is not material, and is not the basis for the summary judgment.

5. Even though neither of the parties had reached their assigned work station, where they would punch in on a time clock, or commence their work duties, they were both on the premises of their common employer, both having entered the secure military premises through security gates, and were in the near vicinity of their work station. The parking lot area is an area assigned by their employer for their use in parking motor vehicles by which they arrive at their place of employment.

6. The plaintiff has filed for Workman's Compensation benefits under the Federal Employee's Compensation Act, and has received those benefits from the Employment Standards Administration, Office of Workman's Compensation Programs, the employer's Workman's Compensation carrier.

From the foregoing findings of fact, the Court makes and enters the following,

CONCLUSIONS OF LAW

1. Under both the State Law of the State of Utah, and the applicable law under the Federal Employee's Compensation Act and the Federal Driver's Act, and the cases decided by both the State Court and the various Federal Courts hold, and this Court accordingly holds that the Workman's Compensation benefits applied for by the plaintiff and paid by the employer of the plaintiff and the defendant is the exclusive remedy in this case, the accident having occurred on the employer's premises, even though the employee had not yet arrived at her work station. Workman's Compensation being the exclusive remedy to the plaintiff both as against her employer, the United States of America, and her fellow employee, the defendant Russell C. Berrett, judgment should be granted to the defendant Russell C. Berrett on his motion for summary judgment.

JUDGMENT

The Court having made and entered the foregoing findings of fact and conclusions of law, now

ORDERS, ADJUDGES, AND DECREES that defendant's motion for summary judgment dismissing the plaintiff's complaint with prejudice is hereby granted.

DATED this 14 day of November, 1986.

BY THE COURT:

/s/ John F. Wahlquist
DISTRICT JUDGE

MAILING CERTIFICATE

I do hereby certify that I mailed a copy of the foregoing on the 3rd day of October, 1986 to Mark H. Gould, 2661 Washington Blvd, Ogden, Utah 84401.

Mark H. Gould